

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 CIAE-00 PM-07 H-03 INR-11 L-03 NSAE-00

NSC-07 PA-04 RSC-01 PRS-01 SP-03 SS-20 USIA-15 SAM-01

SAJ-01 ACDA-19 IO-14 COA-02 CG-00 DLOS-07 DOTE-00

FMC-04 OMB-01 DRC-01 /151 W

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R 121345Z SEP 74

FM AMEMBASSY STOCKHOLM

TO SECSTATE WASHDC 0000

INFO DOD/ISA

LIMITED OFFICIAL USE SECTION 1 OF 2 STOCKHOLM 4046

E.O. 11652: N/A

TAGS: PFOR, MOPS, SW, PLOS

SUBJECT: LAW OF THE SEA: USS FURER

REF: STOCKHOLM 4033

1. TRANSMITTED HEREWITH IS TEXT OF AIDE MEMOIRE AND ACCOMPANYING DOCUMENTS PRESENTED TO AMBASSADOR STRAUSZ-HUPE BY SECRETARY GENERAL OF MINISTRY OF FOREIGN AFFAIRS SVERKER ASTROM ON SEPTEMBER 11 (REFTEL):

"BY THE NOTE NO. 99 OF JUNE 4, 1974 THE EMBASSY OF THE UNITED STATES OF AMERICA REQUESTED AGREEMENT FROM THE SWEDISH GOVERNMENT FOR A ROUTINE VISIT TO STOCKHOLM OF THE NAVAL VESSEL USS FURER (DEG-6) JULY 8-11, 1974.

"THE ROYAL MINISTRY FOR FOREIGN AFFAIRS TOOK PLEASURE IN INFORMING THE EMBASSY ON JUNE 19, 1974 THAT THE VISIT WAS AGREEABLE TO THE SWEDISH GOVERNMENT. PERMISSION FOR THE USS FURER TO ANCHOR IN SWEDISH TERRITORIAL WATERS OFF STOCKHOLM WAS LIKEWISE GRANTED.

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"ON JULY 14, 1974 THE USS FURER PASSED THROUGH SWEDISH

TERRITORIAL SEA OFF THE SOUTHERNMOST COAST OF SWEDEN IN THE NEIGHBOURHOOD OF SMYGEHUK. DURING 16 MINUTES THE VESSEL WAS NAVIGATING INSIDE THE SWEDISH TERRITORIAL SEA. IN ACCORDANCE WITH THE ROYAL PROCLAMATION OF JUNE 3, 1966 (NO. 366) CONCERNING THE ADMISSION TO SWEDISH TERRITORY OF FOREIGN NAVAL

VESSELS AND MILITARY AIRCRAFT, ARTICLE 4.

A NAVAL VESSEL OF A FOREIGN POWER IS ADMITTED TO PASS THROUGH THE TERRITORIAL SEA AFTER NOTIFICATION THROUGH DIPLOMATIC CHANNELS. THE PASSAGE OF THE USS FURER WAS NOT DULY NOTIFIED TO THE MINISTRY FOR FOREIGN AFFAIRS AND, CONSEQUENTLY, THE MINISTRY ON JULY 16, 1974 DREW THE ATTENTION OF THE EMBASSY TO THE FACT THAT NOTIFICATION WAS OMITTED.

"ON AUGUST 8, 1974 THE EMBASSY ORALLY COMMUNICATED THE FOLLOWING MESSAGE TO THE MINISTRY:

I HAVE BEEN INSTRUCTED TO INFORM YOU THAT WE CANNOT ACCEPT THE VALIDITY OF THE POSITION OF THE SWEDISH GOVERNMENT IN REGARD TO ITS COMMUNICATION CONCERNING THE ALLEGED PASSAGE OF THE USS JULIUS FURER THROUGH SWEDISH TERRITORIAL SEAS. WE CANNOT ACCEPT THE POSITION FOR THE FOLLOWING REASONS:

"1. AS IS WELL KNOWN IT IS THE U.S. GOVERNMENT POSITION THAT THE MAXIMUM BREADTH OF THE TERRITORIAL SEA PERMITTED BY INTERNATIONAL LAW IS THREE NAUTICAL MILES.

"2. WITHIN THE TERRITORIAL SEA ALL VESSELS INCLUDING WARSHIPS HAVE THE RIGHT OF INNOCENT PASSAGE WITHOUT PRIOR NOTIFICATION. ACCORDINGLY IT IS THE U.S. GOVERNMENT POSITION THAT THE SWEDISH LAW ON TERRITORIAL SEA OF 1966 IS INCONSISTENT WITH THE RIGHTS OF OTHER STATES UNDER GENERAL PRINCIPLES OF INTERNATIONAL LAW."

"THE MINISTRY WANTS TO BRING TO THE KNOWLEDGE OF THE EMBASSY THAT THERE ARE TWO PROCLAMATIONS DEALING WITH THE SUBJECTS AT HAND: THE ROYAL PROCLAMATION OF JUNE 3, 1966 CONCERNING THE SWEDISH SEA TERRITORY (NO. 374) AND THE ABOVE-MENTIONED ROYAL PROCLAMATION OF JUNE 3, 1966 LIMITED OFFICIAL USE

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CONCERNING THE ADMISSION TO SWEDISH TERRITORY OF FOREIGN NAVAL VESSELS AND MILITARY AIRCRAFT, BOTH OF WHICH WERE COMMUNICATED TO THE EMBASSY ALREADY IN 1966.

"WITH REGARD TO THE POSITION OF THE UNITED STATES GOVERNMENT THAT THE MAXIMUM BREADTH OF THE TERRITORIAL SEA PERMITTED BY INTERNATIONAL LAW IS THREE NAUTICAL MILES, THE MINISTRY WISHES TO POINT TO THE FACT THAT OUT OF

APPROXIMATELY 110 COASTAL STATES MORE THAN EIGHTY APPLY BROADER TERRITORIAL SEAS THAN THREE NAUTICAL MILES. THE ROYAL PROCLAMATION NO. 374 OF 1966, ARTICLE 3, STATES THAT THE BREADTH OF THE SWEDISH TERRITORIAL SEA IS FOUR NAUTICAL MILES. THE BREADTH OF FOUR NAUTICAL MILES HAS NOT PREVIOUSLY BEEN CHALLENGED BY ANY GOVERNMENT.

"AS TO THE CONTENTION THAT WITHIN THE TERRITORIAL SEA ALL VESSELS INCLUDING WARSHIPS HAVE THE RIGHT OF INNOCENT PASSAGE WITHOUT PRIOR NOTIFICATION, THE SWEDISH GOVERNMENT DOES NOT ACCEPT THE VALIDITY OF THIS CONTENTION. CONSEQUENTLY, NO FOREIGN WARSHIP IS ALLOWED TO TRAVERSE THE SWEDISH TERRITORIAL SEA WITHOUT PRIOR NOTIFICATION. TO REQUEST PRIOR NOTIFICATION FOR PASSAGE THROUGH THE TERRITORIAL SEA IS A COMMON AND WELL-ESTABLISHED INTERNATIONAL PRACTICE, BEING APPLIED, INTER ALIA, BY SCANDINAVIAN AND BALTIC STATES INSOFAR AS THEY DO NOT REQUIRE PRIOR AUTHORIZATION. THESE RULES AS APPLIED BY SWEDEN TO ITS TERRITORIAL WATERS HAVE NOT PREVIOUSLY BEEN CONTESTED BY ANY GOVERNMENT.

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R 121345Z SEP 74

FM AMEMBASSY STOCKHOLM

TO SECSTATE WASHDC 2877

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"THE MINISTRY ATTACHES HERETO
A SHORT PAPER CONTAINING

SOME LEGAL COMMENTS ON THE QUESTION OF THE RIGHTS OF
PASSAGE THROUGH TERRITORIAL SEAS, WHICH DOCUMENT DEALS,
INTER ALIA, WITH THE PROCEEDINGS OF THE FIRST GENEVA
CONFERENCE ON THE LAW OF THE SEA.

STOCKHOLM, SEPTEMBER 11, 1974." END OF TEXT OF AIDE MEMOIRE.

BEGIN TEXT OF ENCLOSURE TO AIDE MEMOIRE:

"THE DRAFT CONVENTION ON THE LAW OF THE SEA ADOPTED
BY THE INTERNATIONAL LAW COMMISSION AT ITS EIGHTH SESSION
CONTAINED THE FOLLOWING PROVISION IN ARTICLE 24:

'THE COASTAL STATE MAY MAKE THE PASSAGE OF WARSHIPS
THROUGH THE TERRITORIAL SEA SUBJECT TO PREVIOUS
AUTHORIZA-
TION OR NOTIFICATION. NORMALLY IT SHALL GRANT INNOCENT
PASSAGE SUBJECT TO THE OBSERVANCE OF THE PROVISIONS OF
ARTICLES 17 AND 18."

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"THE COMMISSION FURTHERMORE COMMENTED UPON THIS BY
STATING:

'WHILE IT IS TRUE THAT A LARGE NUMBER OF STATES
DO NOT REQUIRE PREVIOUS AUTHORIZATION OR NOTIFICATION,
THE COMMISSION CAN ONLY WELCOME THIS ATTITUDE, WHICH
DISPLAYS A LAUDABLE RESPECT FOR THE PRINCIPLE OF FREEDOM
OF COMMUNICATIONS, BUT THIS DOES NOT MEAN THAT A STATE
WOULD NOT BE ENTITLED TO REQUIRE SUCH NOTIFICATION OR
AUTHORIZATION IF IT DEEMED IT NECESSARY TO TAKE THIS
PRECAUTIONARY MEASURE SINCE IT ADMITS THAT THE PASSAGE
OF WAR-
SHIPS THROUGH THE TERRITORIAL SEA OF ANOTHER STATE
CAN BE CONSIDERED BY THAT STATE AS A THREAT TO ITS SECURITY,
AND IS AWARE THAT A NUMBER OF STATES DO REQUIRE PREVIOUS
NOTIFICATION OR AUTHORIZATION, THE COMMISSION IS NOT IN
A POSITION TO DISPUTE THE RIGHT OF STATES TO TAKE SUCH
MEASURE.'

"DURING THE FIRST GENEVA CONFERENCE ON THE LAW OF
THE SEA SOME COUNTRIES OPPOSED THE PROPOSAL OF THE INTER-
NATIONAL LAW COMMISSION TAKING THE VIEW THAT WARSHIPS
SHOULD ENJOY THE SAME RIGHTS OF PASSAGE AS MERCHANT SHIPS.
IT IS OF IMPORTANCE TO NOTE, HOWEVER, THAT THIS VIEW WAS
REJECTED IN THE FIRST COMMITTEE OF THE CONFERENCE AND THE
DRAFT OF THE INTERNATIONAL LAW COMMISSION WAS SUBSEQUENTLY
ADOPTED. THUS, THE FIRST COMMITTEE RECOMMENDED TO THE
PLENARY TO ADOPT A TEXT ALLOWING STATES TO REQUIRE BOTH

'AUTHORIZATION AND NOTIFICATION.'

"IN THE PLENARY MEETING A SEPARATE VOTE WAS REQUESTED--
BY DELEGATIONS OPPOSING A RIGHT FOR COASTAL STATES TO
REQUIRE PRIOR AUTHORIZATION--ON THE PARTICULAR STIPULATION
PERMITTING A COASTAL STATE TO REQUIRE PRIOR AUTHORIZATION
BEFORE PASSAGE. IN THE VOTE, THIS STIPULATION FAILED TO
OBTAIN THE NECESSARY TWO-THIRDS MAJORITY (45 IN FAVOUR OF
RETAINING THE STIPULATION, 27 AGAINST AND 6 ABSTENTIONS).
THE RESULT OF THIS SEPARATE VOTE WAS THAT THE ARTICLE
WOULD CONFIRM THE RIGHT OF COASTAL STATES TO REQUIRE
NOTIFICATION OF PASSAGE THROUGH THE TERRITORIAL SEA, BUT
NOT A RIGHT TO REQUIRE PRIOR AUTHORIZATION FOR SUCH PASSAGE.
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AT THIS POINT OF THE PLENARY MEETING MANY DELEGATIONS, WHO
WISHE TO EXPLICITLY CONFIRM THE RIGHT OF A COASTAL STATE
TO REQUIRE ALSO PRIOR AUTHORIZATION, EXPRESSED THE VIEW
THAT A STIPULATION ALLOWING A STATE TO REQUIRE ONLY PRIOR
NOTIFICATION OF FOREIGN NAVAL VESSELS WOULD CONSTITUTE AN
UNWARRANTED LIMITATION UPON THE SOVEREIGN RIGHTS OF THE
COASTAL STATE. ACCORDINGLY, WHEN THE ENTIRE ARTICLE WAS
PUT TO A VOTE, IT FAILED TO BE SUPPORTED BY THE QUALIFIED
MAJORITY REQUIRED. IT IS OF IMPORTANCE TO NOTE, HOWEVER,
THAT 43 DELEGATIONS VOTED IN FAVOUR OF THE ARTICLE AND
ONLY 24 AGAINST AND AMONG THOSE WHO VOTED AGAINST WERE
A NUMBER OF DELEGATIONS WHO DID SO, NOT BECAUSE THEY
OPPOSED A RIGHT TO REQUIRE NOTIFICATION BUT BECAUSE IT
SEEMED TO THEM THAT SUCH A RIGHT, MENTIONED ALONE, WOULD
E CONTRARIO EXCLUDE A RIGHT TO REQUIRE PRIOR AUTHORIZA-
TION. THESE DELEGATIONS PREFERRED NO ARTICLE AT ALL ON
THE SUBJECT. A MAJORITY OF THE PARTICIPATING STATES WERE,
HOWEVER, IN FAVOUR OF INCLUDING IN THE CONVENTION A
STIPULATION PERMITTING THE COASTAL STATE TO REQUIRE PRIOR
NOTIFICATION. THE PROCEEDINGS OF THE CONFERENCE LEAVE NO
ROOM FOR DOUBT THAT THE MAJORITY OF THE DELEGATIONS TOOK
THE VIEW THAT NAVAL VESSELS DO NOT HAVE THE SAME RIGHTS
AS MERCHANT SHIPS WITH REGARD TO INNOCENT PASSAGE AND
THAT IT IS ENTIRELY APPROPRIATE FOR A COASTAL STATE TO
REQUIRE PRIOR NOTIFICATION OF NAVAL VESSELS' PASSAGE
THROUGH TERRITORIAL WATERS."

STRAUSZ-HUPE

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